

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

ROBERT COTNER,)
)
)
Petitioner,)
)
)
v.) **No. CIV 05-007-JHP-KEW**
)
)
WARDEN BECK,)
)
)
Respondent.)

OPINION AND ORDER
DENYING SECOND MOTION FOR APPOINTMENT OF COUNSEL

Petitioner has filed a second motion for appointment of counsel [Docket #40], alleging he is handicapped under the Americans with Disabilities Act, and the respondent is discriminating against him because of his disability. He asserts he needs an attorney to assist with investigation, research, and discovery in this case. He further claims in his supporting brief [Docket #41] that he is not provided meaningful access to the courts at his facility.

Petitioner still bears the burden of convincing the court that his claim has sufficient merit to warrant appointment of counsel. *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985) (citing *United States v. Masters*, 484 F.2d 1251, 1253 (10th Cir. 1973)). The court again has carefully reviewed the merits of petitioner's claim, the nature of factual issues raised in petitioner's allegations, and petitioner's ability to investigate crucial facts. *McCarthy*, 753 F.2d at 838 (citing *Maclin v. Freake*, 650 F.2d 885, 887-88 (7th Cir. 1981)). After considering petitioner's ability to present his claims and the complexity of the legal issues raised by the claims, the court finds that appointment of counsel still is not warranted. *See Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991); *See also Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). The court further finds that petitioner is an experienced pro se litigator, and this matter can be decided based on the record before the court.

ACCORDINGLY, petitioner's second motion for appointment of counsel [Docket #40] is DENIED.

IT IS SO ORDERED this 2nd day of January 2008.



James H. Payne
United States District Judge
Eastern District of Oklahoma